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BOARD OF STANDARDS AND APPEALS

MEETING OF: November 14, 2023
CALENDAR NO.: 2022-38-BZ
PREMISES: 4902 & 4920 14th Avenue, Brooklyn
Block 5642, Lots 33 & 42

ACTION OF BOARD — Application granted on condition.

THE VOTE —
Affirmative: Chair Chanda, Commissioner Ottley-Brown,
Commissioner Sheta, and Commissioner Yoon.....4
Negative:.....0
Absent: Vice-Chair Scibetta.....1

THE RESOLUTION —

The decision of the Department of Buildings (“DOB”), dated May 24, 2023, acting New Building Application No. 321384042, reads, in pertinent part:

- 1. ZR 24-11: Proposed Maximum Lot Coverage for a Community Facility in an R6 Zoning District is contrary to ZR §24-11.
- 2. ZR 24-522: Proposed Maximum Street Wall Height & Sky Exposure for a Community Facility in an R6 Zoning District is contrary to ZR §24-522.
- 3. ZR 24-361: Proposed Rear Yard for a Community Facility in an R6 Zoning District is contrary to ZR 24-361.
- 4. ZR 24-51: Proposed bulkheads and mechanical equipment are contrary to ZR 24-51.

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an R6 zoning district, the development of a five-story, plus sub-cellar and cellar, Use Group (“UG”) 4A house of worship which does not comply with zoning requirements for lot coverage (Z.R. § 24-11), rear yard (Z.R. § 24-361), maximum height of street wall, required setbacks (Z.R. § 24-522), and permitted obstructions (Z.R. § 24-51).

A public hearing was held on this application on January 24, 2023, after due notice by publication in *The City Record*, with continued hearings on April 25, 2023 and June 6, 2023, and then to decision on November 14, 2023. Community Board 12, Brooklyn, recommends

approval of this application. The Board also received two form letters of support for this application.

I.

The Premises are comprised of lots 33 and 42, located on the northwest corner of 14th Avenue and 49th Street, within an R6 zoning district, in Brooklyn. Lot 33 has approximately 80 feet of frontage along 14th Avenue, 200 feet of frontage along 49th Street, 18,000 square feet of total lot area, and is currently occupied by a three-story, UG 4 house of worship. Lot 42 has approximately 120 feet of frontage along 14th Avenue, 100 feet of frontage along 50th Street, 12,000 square feet of lot area, and is currently occupied by a community facility operated as the Yong Men's and Young Women's Hebrew Association. Currently, the lots are two separate zoning lots, however, the applicant represents that, as part of the proposed project, lots 42 and 33 would eventually be merged.

II.

The applicant proposes to construct a a five-story, plus sub-cellar and cellar, building, with approximately 103,409 square feet of floor area (3.44 FAR); no side yards; no parking; no rear yard; 100% lot coverage; a 68'-0" street wall height with no setback; and 966 square feet of obstructions on each street frontage. The applicant states that the proposed building would have three entrances along 49th Street, two entrances along 14th Avenue, and three entrances along 50th Street. The applicant describes the building as follows:

- A sub-cellar with approximately 25,549 square feet, containing the men's Tish Room/Social Hall, the Heichal Hatorah/Study Hall, serving rooms, mechanical, storage, accessory uses, bathrooms, and trash storage to accommodate 658 occupants. Additionally, within the subcellar, an approximately 2,430-square foot mezzanine would provide mechanical space is proposed;
- The approximately 25,549 square-foot cellar would contain the women's Tish/Social Hall Gallery, the men's Mikvah, accessory uses (showers, dressing rooms, and laundry room areas), and bathrooms to accommodate 386 occupants;
- The approximately 29,777 square-foot first floor would serve as the point of entry to all program spaces in the building and also contain the Shteibel/Prayer Rooms, the Rebbe's Bais Medrash, the Bris Room, and the Rebbe's Kvitel Rooms, bathrooms, and accessory use to accommodate 1,740 occupants;

- The approximately 29,842 square-foot second floor would contain the men’s Shul/Sanctuary that would hold 1,242 occupants and the Kollel Bais Medrash/Study Hall, bathrooms, and accessory uses to hold 312 occupants;
- The approximately 17,935 square-foot third floor would encompass the women’s Gallery accommodating 456 occupants and the Succah/women’s Social Hall, bathrooms, and accessory uses to hold 366 occupants;
- The approximately 12,292 square feet fourth floor would consist of the Bochorim/Youth Gallery, bathrooms, and accessory uses to accommodate 460 occupants;
- The 12,275 square-foot fifth floor would contain the women’s Gallery, bathrooms, and accessory uses;
- The third, fourth and fifth floors would all have an opening to the second floor in order for women and children to view religious services from the gallery areas and to participate during these services that take place in the second floor Shul/Sanctuary.

In the subject R6 zoning district, the Zoning Resolution requires a maximum lot coverage of 70% for a corner lot and 65% for an interior lot above 23'-0", pursuant to Z.R. § 24-11. Z.R. § 24-361 mandates a rear yard with a depth of 30 feet above 23'-0". Here, the requested rear yard and lot coverage waivers pertain only to the second through fifth floors. Z.R. § 24-51(f) dictates the maximum permitted obstructions on 14th Avenue and 49th Street is 800 square feet while the maximum permitted obstruction on 50th Street of 400 square feet. Finally, Z.R. § 24-522 regulates the maximum height of the street wall to 60'-0" with a required setback of 20'-0", and a sky exposure plane of 5.6:1. Accordingly, the applicant seeks the relief requested herein.

III.

The Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” Z.R. § 72-21.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, its programmatic needs and the restrictive bulk regulations—that create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district. The applicant represents that its programmatic needs include accommodating the current and future demands of its growing congregation. The applicant estimates that by

2027, the number of congregants attending services on special occasions is projected to be 2,766, and the proposed building would provide space for approximately 3,032 congregants. Furthermore, the applicant maintains that, in order to serve as its national organizational headquarters, the proposed development requires sufficient worship, classroom, and administrative space to sustain the existing congregation, allow the congregation to grow, and to provide the necessary space for maneuverability. The applicant represents that its greatest attendance days would be the religious holidays, followed by Friday evening through Saturday evenings, during which congregants are restricted by their religious beliefs from utilizing motorized vehicles to attend services, thereby limiting how they would arrive at the Premises. As such, the applicant submitted a Programmatic Needs Study, which found that on weekdays, Sunday through Thursday, the building would be utilized from 5 a.m. to midnight; in the afternoons on Friday, from 1 p.m. to midnight; and on Friday evenings to Saturday evenings and holidays, from 9:00 a.m. to midnight. Based on the anticipated weekday and weekend schedules provided in the Programmatic Needs Report, using the estimated occupancy, with consideration of non-simultaneous use of the various programming spaces, it is anticipated that peak occupancy from Sunday through Thursday would be around 1,069 congregants at 9:30 a.m.; peak occupancy on Friday would occur from 8:00 p.m. to 10:00 p.m. with approximately 1,240 congregants; and peak occupancy during Saturdays would be approximately 2,980 congregants from 9:00 a.m. to 12:00 p.m.

Furthermore, the applicant declares that the proposed building requires dedicated space to provide an estimated 2,700 children and teens with separate and quiet classroom space, families, and friends to attend religious ceremonies, a separate place to meet, advise, and counsel congregants, a men's Mikvah (used for the purpose of ritual immersion to achieve ritual purity), and a communal synagogue Sukkah (a temporary structure built for use during the weeklong Jewish festival of Sukkoth). The applicant claims that the proposed building is designed to accommodate the necessary religious services and provide the required program and administrative spaces.

Here, the applicant further states that the relevant bulk regulations are too restrictive to be able to accommodate its programmatic needs. In support of this contention, the applicant submitted as-of-right plans which illustrate an a five-story, plus cellar and sub-cellar, UG 4 house of worship with approximately 113,646 square feet of floor area (3.78 FAR). The plans illustrate the following:

- The sub-cellar and cellar floors would have approximately 25,549 square feet of floor area for the library space, meeting/reading rooms, mechanical space, accessory uses, and

bathrooms to hold approximately 374 occupants in the sub-cellar and 208 occupants in the cellar;

- The first floor would have a floor area of approximately 29,953 square feet and would consist of prayer rooms, accessory uses, and bathrooms to accommodate 814 congregants;
- The second floor would have a floor area of approximately 20,405 square feet and would contain the main temple, prayer rooms, a reading room, bathrooms, and accessory uses to accommodate a total of 1,501 congregants;
- The third, fourth and fifth floors would each consist of approximately 20,433 square feet of floor area and be able to accommodate 93 people, consisting of the women's and youth Galleries, prayer rooms, break rooms, bathrooms, and accessory uses.

The applicant notes that the as-of-right design does not have a designated study space and concludes that while it would provide the necessary worship space, the layout that results from complying with rear yard and lot coverage requirements does not allow for the essential women and youth gallery spaces and does not provide for key program spaces, including a Mikvah. Moreover, since the upper floors in the as-of-right plans would not have as much of the floor open to the temple on the second floor, the number of women and children able to participate would be much lower than in the proposed design.

Accordingly, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a not-for-profit religious institution, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Specifically, the applicant points out that the proposed community facility use is permitted, as-of-right, in the subject R6 zoning district. First, the applicant submitted the massings of the subject block to demonstrate that the proposed development would be consistent with the area's established urban design context. Furthermore, the applicant notes that the area surrounding the Premises is generally populated by residential and community facility buildings, with predominantly five- and six-story

buildings along 14th Avenue, such as two six-story, multi-family dwellings located on the subject block and three adjacent, six-story buildings directly across 49th and 48th Street. Additionally, the applicant represents that a majority of the congregation walks to the synagogue and would not contribute to traffic or parking issues.

Second, the applicant declares that the proposed design is such as to minimize its effects on the surrounding area and begins by noting that the proposed floor area and FAR are permitted as of right and that the proposed building is eight feet taller than the maximum permitted height of 60 feet. Furthermore, the applicant states that the requested rear yard, lot area, street wall height, and permitted obstruction waivers would not negatively impact the character of the neighborhood because the adjacent property is a community facility use that does not maintain a rear yard and has a side yard that is used a driveway, and therefore, the lack of a rear yard at the Premises would not disrupt the neighboring building. Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are inherent in the unique programmatic needs of the synagogue, and absent the requested waivers, it would be unable to alleviate the hardship encountered by its congregation. In support of this contention, the applicant submitted a deed chain detailing single and separate ownership of lots 33 and 42. Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

E.

The applicant notes that the variance request is the minimum necessary to develop a community facility at the Premises. The applicant submits that the proposed building is designed specifically to achieve the applicant's programmatic needs and to functionally accommodate its congregation, thereby limiting the number of waivers sought. Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

IV.

Over the course of hearings, the Board raised concerns regarding the proposed design and directed the applicant to (1) explore alternative designs for the Sukkah portion of the building in an effort to reduce the degree of non-compliance in the rear yard; (2) remove the domes and stair/elevator bulkheads from penetrating the sky exposure plane; (3) reduce the parapet height to a complying maximum height of 4'-0" and the size of the sanctuary opening made smaller, thereby allowing for a reduction in height.

In response to the comments regarding the Sukkah, the applicant clarified that the Talmud and authoritative opinions dictate the placement of the Sukkah, noting it is not permissible to build one in a location where congregants might unknowingly eat outside the Kosher Sukkah and might also recite a blessing in vain. The applicant further described that both the proposed sloped roof and the setback roof require structural beams larger than four tefachim (9.4 inches), and as such, other designs would invalidate the entire Sukkah space as it is not completely kosher. Additionally, the applicant submitted revised plans containing a note in the subcellar stating, "Not for Catering or Banquets – Warming Kitchen Only".

As a result of the other requested changes to proposed plans, (1) the scope of the requested waiver of Z.R. § 24-522 has been reduced to only apply to the 8'-0" portion of the building which does not set back above the maximum permitted base height of 60'-0"; (2) the scope of the requested waiver of Z.R. § 24-51(f) has been reduced as the revised proposal contains less non-complying bulkhead area as a permitted obstruction. In response to the comments about the sanctuary opening, the applicant submitted an acoustical analysis that explains that the opening cannot be made smaller as its proposed size is essential for the sound to properly travel to the upper floors during service.

V.

The project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 22BSA025K, dated November 14, 2023. The EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; waterfront revitalization program; infrastructure; hazardous materials; solid waste and sanitation services; energy; traffic and parking; transit and pedestrians; air quality; noise; or public health.

By correspondence dated April 12, 2022, the New York City Landmarks Preservation Commission (“LPC”) states that the subject Premises have there are no architectural or archaeological significance.

By letter dated February 9, 2023, the NYC Department of Environmental Protection (“DEP”), Bureau of Environmental Planning and Analysis states that it has reviewed the air quality and noise sections of the EAS and backup files dated January 2023 for the proposed project. DEP has no comment on the air quality and have the following comments on noise:

Noise:

1. When window-wall attenuation is required, please add that alternate means of ventilation is also required.

By letter dated October 5, 2023, NYC DEP, Bureau of Sustainability states that it has reviewed the August 2023 Phase I Environmental Site Assessment (Phase I) for the proposed project. The August 2023 Phase I report revealed that historical on-site and surrounding area land uses consisted of a variety of residential and commercial uses including a community facility, a religious facility, a church, residential buildings, schools, a temple, a parking lot, mixed use residential and commercial use buildings, a bank, a dry cleaner, etc. Regulatory databases identified 8 spills and 2 historical cleaner sites within 1/8 mile; 17 underground storage tank sites, 55 aboveground storage tank sites, and 2 dry cleaners within 1/4 mile; and 18 leaking storage tank sites within 1/2 mile of the subject property. Based upon our review of the submitted documentation, we have the following comments and recommendations to BSA:

- The Phase I report did not identify potential hazardous materials concerns on-site or nearby. Therefore, no further investigation is warranted for the proposed project.

By letter dated November 9, 2023, the NYC Department of Transportation (“DOT”) states that Following the 2021 CEQR Technical Manual, Level 1 (Trip Generation) screening assessment, a detailed traffic analysis is not warranted as the site generated trips would not exceed the 50-peak hour vehicle trip-end threshold. Following the 2021 CEQR Technical Manual Level 1 (Trip Generation) and Level 2 (Trip Assignment) screening assessments, a pedestrian level of service (LOS) analysis was conducted for the weekday PM and Saturday AM peak hours at thirteen sidewalks, thirteen crosswalks, and twenty-nine corners. All analyzed pedestrian elements are projected to operate at acceptable LOS. To verify future volume projections presented in the EAS, the applicant has committed to conducting a post trip generation survey approximately six months after the site is fully built and operational. The applicant will submit a

scope of work for DOT's review and approval, prior to its execution. The survey will be conducted following the 2021 (or most recent) CEQR Technical Manual guidelines and include the following(See attached commitment letter):

- The trip generation survey will include site-generated inbound and outbound trips in 15minute increments for 24 hours on one mid-weekday (Tuesday, Wednesday, or Thursday) and on one Saturday.
- The survey results, travel demand factors and trip generation will be compared to those presented in the EAS and reviewed by DOT to validate the conclusions.
- If the actual trip-making exceeds what was projected in the EAS, the applicant will perform a Level 2 CEQR screening assessment using the survey results to determine whether additional data collection and LOS analyses are necessary to identify potential traffic and pedestrian issues surrounding the new development. Prior to conducting any data collection and analyses, the applicant will submit the screening assessment and SOW detailing locations, methodology to be used for analyses, etc., for DOT for review and approval.
- A report summarizing the finding of trip generation survey, all back-up materials, and any subsequent analysis will be submitted NYC DOT for review and approval.

The applicant commits to implement the following safety improvements and to continue work with NYC DOT to ensure that the appropriate safety improvements are implemented following NYCDOT Design Guidelines:

- Reconstruct the northwest corner of 50th St & 14th Ave and the curb per NYC DOT's planned design. If this involves relocation of a catch basin, the developer should also be responsible for the relocation.
- Builders Pavement Plan ("BPP") should upgrade all pedestrian ramps fronting its lot, including the northwest, southwest and northeast corners of 50th St & 14th Ave, and the northwest, southwest and southeast corners of 49th St & 14th Ave. The Applicant will be responsible for all costs associated with the design and construction of project-related improvements. NYC DOT will continue to participate in the review process related to construction of concrete neckdown and pedestrian ramps. BSA should include a condition in the approval that Applicant/Department of Building is required to submit BPP and all the required drawings as per NYC DOT specifications, for NYC DOT review and approval.

The applicant submitted a post-approval commitment letter to respond to the DOT comments, dated November 9, 2023, to address trip generation at the site, stating, in part:

This Letter of Commitment is to confirm our responsibilities to perform a post BSA Approval trip generation survey at six months after the site is fully built and operational to determine daily trips generated by the project on weekdays and Saturday. We understand that a consultation with NYC DOT would be required to confirm the scope of the survey prior to its execution. The survey will be conducted following the 2021 (or most recent) CEQR Technical Manual guidelines and including the following:

- The trip generation survey will include site-generated inbound and outbound trips in 15-minute increments for 24 hours on one mid-weekday (Tuesday, Wednesday or Thursday) and on one Saturday.
- The collected survey results, travel demand factors, and trip generation will be compared to those presented in the EAS and reviewed by DOT to validate conclusions.
- If the actual trip-making exceeds what was projected in the WAS, the applicant will perform a Level 2 CEQR screening assessment using the survey results to determine whether additional data collection and LOS analyses are necessary to identify potential traffic and pedestrian issues surrounding the new development. Prior to conducting any data collection and analyses, the applicant will submit the screening assessment and SOW detailing locations, methodology to be used for analyses, etc. for DOT review and approval.
- A report summarizing the finding of trip generation survey, all back-up materials, and any subsequent analysis will be submitted to NYC DOT for review and approval.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Based on the foregoing, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

VI.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental

Quality Review and Executive Order No. 91 of 1997, as amended and makes each and every one of the required findings under Z.R. § 72-21 to *permit*, the construction of a five-story, plus cellar, UG 4 lot coverage (Z.R. § 24-11), rear yard (Z.R. § 24-361), maximum height of street wall, required setbacks (Z.R. § 24-522), and permitted obstructions (Z.R. § 24-51); *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved: November 14, 2023” — Eighteen (18) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum lot coverage of 100%; a rear yard measuring a minimum of 0'-0" at the first floor and above: obstructions along 14th Avenue, and 49th Street, and 50th street measuring a maximum of 966 square feet; a maximum street wall height of 68 feet; and a minimum setback of 0'-0", as illustrated on the Board-approve plans;

THAT the building shall incorporate 31 dBA of attenuation for the façade along 14th Avenue :

THAT a closed window condition with an alternate means of ventilation will be provided;

THAT sidewalk improvements will require DOT review;

THAT to verify future volume projections, the applicant shall conduct post approval trip generation surveys approximately six months after the site is fully built and operational to determine the daily trips generated by the project on weekdays and Saturdays;

THAT the applicant shall submit a scope of survey for NYC DOT's review and approval prior to its execution;

THAT the survey will be conducted following the 2021 or most recent CEQR Technical Manual Guidelines available at the time;

THAT the applicant shall implement the following safety improvements:

- Reconstruction of the curb located the northwest intersection of 50th Street and 14th Avenue as per NYC DOT's planned design;

THAT if this reconstruction involves relocation of a catch basin, the developer shall be responsible for the relocation;

THAT the applicant shall work with NYC DOT to ensure that the appropriate safety improvements are implemented following NYC DOT Design Guidelines;

THAT the BPP should upgrade all pedestrian ramps fronting the subject lot, including the northwest, southwest, and northeast corners of 50th Street and 14th Avenue, and the northwest, southwest and southeast corners of 49th Street and 14th Avenue;

THAT the applicant will be responsible for all costs associated with the design and construction of project-related improvements;

THAT NYC DOT will continue to participate in the review process related to construction of concrete neckdown and pedestrian ramps. that applicant/Department of Building is required to submit BPP and

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all the required drawings as per NYC DOT specifications, for NYC DOT review and approval, prior to the issuance of a Temporary Certificate of Occupancy (“TCO”);

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2022-38-BZ”), shall be obtained within four years, by November 14, 2027;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

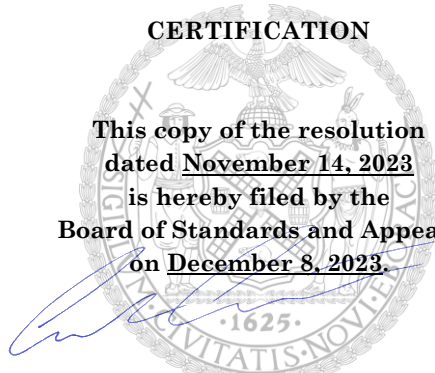
THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 13, 2023.

CERTIFICATION

**This copy of the resolution
dated November 14, 2023
is hereby filed by the
Board of Standards and Appeals
on December 8, 2023.**



**Carlo Costanza
Executive Director**